

**BEFORE THE  
STATE BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**LELAND CHUNG HONG TOY, O.D.**

Case No. CC-2009-113

Optometrist License No. 6128

OAH No. 2011040766

Respondent

**DECISION**

The attached Proposed Decision of the Administrative Law Judge dated June 14, 2012, is hereby adopted by the State Board of Optometry in the above-entitled matter, except that, pursuant to the provisions of Government Code Section 11517(c)(2)(B), the proposed penalty is reduced as follows:

**ORDER**

Certificate No. 6128 issued to respondent Leland Chung Hong Toy, O.D., is revoked by reason of Legal Conclusions 2, 5 and 6, jointly and individually. However, the revocation is stayed and the certificate shall be placed on probation for three (3) years upon the following terms and conditions:

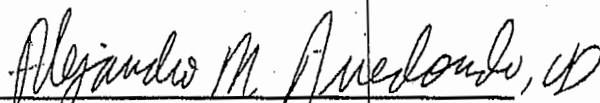
- Obey All Laws – Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.
- Cooperate with Probation Surveillance – Respondent shall comply with the board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the board or its agent.
- Tolling of Probation If Respondent Moves Out-of-State – The Period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is required to immediately notify the board in writing of the date of departure, and the date of return, if any.
- Payment of Costs – Respondent shall pay the board its costs of investigation and enforcement in the amount of \$12,354.10. This amount

is payable in equal monthly installments during the period of probation, provided that the full amount shall be paid 90 days prior to completion of probation. Respondent shall commence making payments upon notification by the board or its designee of the monthly installment amount, and the payment schedule. A failure to make timely payments pursuant to the payment schedule shall constitute a violation of probation, although respondent is free to pay the costs earlier than prescribed in the schedule. If respondent has not paid the full amount of costs at the end of the three-year period of probation, his probation shall be extended until full payment has been made.

- Education Coursework – Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the board for its prior approval an educational program or course to be designated by the board, which shall not be less than 30 hours the first year of probation, 20 hours the second year of probation, and 10 hours the third year of probation. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure. Respondent shall bear all associated costs. Following the completion of each course, the Board or its designee may administer an examination to test petitioner's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses as are approved by the board.
- Completion of Probation – Upon successful completion of probation, respondent's certificate will be fully restored.
- Violation of Probation – If respondent violates probation in any respect, the board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

This decision shall become effective on October 12, 2012

IT IS SO ORDERED September 12, 2012

  
Alejandro M. Arredondo, O.D., President

BEFORE THE  
STATE BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LELAND CHUNG HONG TOY, O.D.

Certificate of Registration No. 6128,

Respondent.

Case No. 2009-113

OAH No. 2011040766

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, in Oakland, California, on May 14, 15 and 16, 2012.

Deputy Attorney General Nicholas Tsukamaki represented complainant Mona Maggio, Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

John L. Flee, Attorney at Law, represented respondent Leland Chung Hong Toy, O.D., who was present.

The record closed and the matter was submitted for decision on May 16, 2012.

**FACTUAL FINDINGS**

1. Respondent Leland Chung Hong Toy holds Optometrist Certificate of Registration No. 6128, which was first issued on August 31, 1976. Respondent's Certificate of Registration was in full force and effect at all times relevant to these proceedings, and will expire on March 31, 2014, unless renewed.

2. Complainant Mona Maggio, acting in her official capacity as Executive Officer of the State Board of Optometry, Department of Consumer Affairs, issued a first amended accusation against respondent on October 11, 2011. At hearing, complainant

amended the first amended accusation to delete from page four, line 24, and from page five, line five, the word "immediately."

3. Respondent is a Senior Optometrist at The Permanente Medical Group (Kaiser) in Pleasanton. Respondent has worked in Kaiser's eye care department since 1984. The first amended accusation alleges that respondent committed unprofessional conduct in connection with his treatment of one Kaiser patient, S.M.<sup>1</sup> Respondent's unprofessional conduct is alleged to include gross negligence, repeated acts of negligence, incompetence, the failure to maintain adequate and accurate records, and the failure to refer S.M. to a retinal specialist. Respondent does not believe that his treatment of S.M. was unprofessional in any way.

4. The pertinent facts presented at hearing are summarized below.

*May 12, 2008 Examination by Gary Seltzer, M.D.*

5. S.M. is a retired mechanical engineer. He is 67 years old and was diagnosed with diabetes at age 45. S.M. made an appointment to see an ophthalmologist after he noticed floaters and flashes in his eyes. On May 12, 2008, S.M. was examined by Kaiser Ophthalmologist Gary Seltzer, M.D. Dr. Seltzer diagnosed S.M. with vitreous degeneration.

*June 6, 2008 Examination by Respondent*

6. On June 6, 2008, respondent performed a standard diabetic retinopathy screening on S.M. This included a dilated examination of S.M.'s macula and retina. Respondent reviewed S.M.'s history and "looked for diabetes issues." Respondent also investigated S.M.'s complaint of floaters and flashes. He evaluated S.M. for retinal tears with testing that included biomicroscopy, binocular indirect ophthalmoscopy and tonometry.

7. Respondent's treatment records revealed the following: S.M. is nearsighted. On the day of the exam, S.M.'s visual acuity was "OD 20/30, and OS 20/30."<sup>2</sup> S.M.'s diagnoses included diabetes mellitus type two, and diabetic retinopathy. Under the word "macula," respondent's notes indicated "OD one dot heme, [<sup>3</sup>] OS clear and flat." Under the word "retina," respondent's notes indicated "OD dot heme in 2 quadrants; OS dot heme in one quadrant." S.M. also had a history of cataracts, and underwent cataract surgery in his left eye in 2007.

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<sup>1</sup> Initials are used to protect S.M.'s privacy.

<sup>2</sup> OD refers to the right eye, and OS refers to the left eye.

<sup>3</sup> Heme stands for hemorrhage.

8. S.M. reported to respondent that he was seeing floaters<sup>4</sup> and flashes in his left eye. S.M. also maintains that during this exam he told respondent that he had experienced dark shades in his left eye. Respondent denies that S.M. informed him of the presence of dark shades in his left eye. Respondent agrees that the presence of dark shades is a serious symptom, which he describes as an "ominous sign" of a retinal tear or detachment. Respondent maintains that had S.M. informed him of the presence of dark shades in his left eye, he would have "really checked him out," noted this symptom in the treatment record, and referred him to an ophthalmologist. Although S.M.'s email to respondent on August 26, 2008, and his complaint to the board in December 2009, corroborates his testimony that he told respondent about the dark shades on June 6, 2008, his email to respondent on August 22, 2008, suggests that the dark shades in his left eye were a recent development. It is possible that S.M. mentioned the presence of dark shades and that respondent did not hear him, or that S.M. is confused regarding the first time that he saw dark shades. Both respondent and S.M. were credible witnesses. For these reasons, it was not established by clear and convincing evidence to a reasonable certainty that on June 6, 2008, respondent was aware that S.M. was experiencing dark shades in his left eye.

9. Respondent's treatment records for the exam noted the presence of a "few pigmented cells" in the vitreous of S.M.'s left eye. Respondent also noted that respondent had a Posterior Vitreous Detachment (PVD) in his left eye. Although Dr. Seltzer's treatment records from S.M.'s May 2008 exam did not indicate the presence of PVD or pigmented cells in the vitreous of S.M.'s left eye, respondent asserted in a letter to the board that when he examined S.M. in June there was no change in S.M.'s condition since S.M.'s visit to Dr. Seltzer in May 2008.

10. After respondent examined S.M., he "felt that [he] got a good view of [S.M.'s] retina." He maintained that had he been dissatisfied, he would have used a different technique to obtain a better view of the retina. Respondent did not refer S.M. to a retinal specialist after finding a PVD and pigmented cells in S.M.'s left eye because, in his words, "there was nothing for a specialist to treat."

11. Respondent also did not perform a visual field screening or a scleral indentation (also known as scleral depression) on S.M. in order to determine whether S.M.'s left retina was torn or detached. Scleral indentation is a procedure used when a practitioner suspects that there might be a retinal hole or tear. Such a procedure enables the practitioner to manipulate a part of the retina in such a way to expose a hole or tear. A scleral indentation is uncomfortable to the patient. For this reason, it is not performed unless there is a question as to whether a patient's retina has a hole or is torn. Some optometrists prefer not to perform such tests, and refer the procedure to another optometrist or to an ophthalmologist.

12. Respondent is comfortable performing scleral indentations and performs them about eight times per month. He did not perform such a procedure on S.M. He did not think

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<sup>4</sup> Floaters may be experienced as black dots in a person's visual field.

that it was necessary because he thought that his exam provided him with an adequate view of S.M.'s retina.

13. Respondent did not document in S.M.'s treatment record the presence or absence of retinal holes, tears or detachment in S.M.'s retina. Respondent maintains that he "looked for a retinal detachment" during the June 2008 exam. In a letter to the board written after S.M. filed a complaint against him, respondent maintained that during this exam, he determined that "there was no sign of retinal detachment or tears and that the floaters and flashes [S.M.] was experiencing were a result of the aging process."

14. Respondent asserts that had he seen a retinal tear or detachment he definitely would have noted it in S.M.'s treatment record. Respondent explained that although he "normally" documents the absence of retinal tears or detachments in a patient's treatment record, he did not do so because he was working off of a "diabetic retinopathy template" and not a "floaters and flashes template, which includes a finding for the presence or absence of a retinal tear." Respondent stated that he used the "diabetic retinopathy template" because that was the "main reason" for S.M.'s appointment. He explained that there is "no place" on this template to make an entry regarding retinal tears or detachments. Had he been working off of a "floater template" he would have indicated negative findings regarding retinal tears or detachments.

15. At the close of the exam, respondent instructed S.M. to return in one year for a routine diabetic retinopathy screening. He also instructed S.M. to contact respondent or another doctor immediately if there was any change in floaters or flashes. S.M. left the exam feeling very concerned about his left eye. He was not aware that retinal specialists existed. S.M. thought respondent was an ophthalmologist, and when respondent did not find a retinal tear, S.M. believed him. Had S.M. been aware that retinal specialists existed, he would have insisted on seeing one.

16. In connection with respondent's examination of S.M. it is alleged that respondent's failure to perform scleral indentation to determine whether S.M.'s retina was torn or detached constituted gross negligence and incompetence. It is also alleged that respondent was negligent in failing to perform a visual screening test. It is further alleged that respondent's failure to refer S.M. to a retinal specialist after finding pigmented cells and a PVD in S.M.'s left eye constituted gross negligence, incompetence, and unprofessional conduct because the exam revealed a substantial likelihood that S.M.'s left retina was torn or detached. In connection with respondent's treatment records, it is alleged that respondent failed to maintain adequate and accurate records relating to the provision of services to his patients, based upon respondent's failure to document the presence or absence of retinal holes, tears, or detachment.

*August 22, 2008 Email to Respondent*

17. On Friday, August 22, 2008, at 8:10 p.m., S.M. sent respondent an email. He wrote:

I am continuing to have problem with my left eye, for which I have seen you and another ophthalmologist. I am constantly afraid that I will have a retinal detachment. *Recently I am seeing a lot of tiny black dots and also like lightening flashes and hazy vision with some darkness in one corner of my left eye.* (emphasis added.) You had asked me to call if there is a veil comes [sic] on the eye, but I want to know if something can be done ahead of time so that this does not happen. Also we are going on a trip for 2 weeks on Sep-10. Should I see you before I leave?

18. Respondent did not see this email until Monday morning, August 25, when he returned to work. Respondent emailed S.M. the following response at 8:33 a.m.:

If you are seeing either more dots or different symptoms than before, you should go ahead and make another appointment. The number is 847 5065.

According to respondent, the telephone number listed in this email is the telephone number for the ophthalmology "eye nurse" who provides Kaiser patients with access to same day eye appointments or emergency care. Respondent's email did not immediately refer S.M. to proceed to a retinal specialist or an emergency room.

19. In connection with respondent's email dated August 25, 2008, it is alleged that his failure to immediately refer S.M. to proceed to a retinal specialist or to an emergency room constituted gross negligence and incompetence.

*S.M.'s Retinal Surgery, Subsequent Treatment and Complaint to the Board*

20. On August 23, 2008, the morning after S.M. sent the email to respondent, S.M. sought immediate care at Kaiser after the vision in his left eye continued to deteriorate. He was seen on the same day by Ophthalmologist Michelle Tze-Yuen Nee, M.D. Dr. Nee diagnosed S.M. with a retinal detachment<sup>5</sup> involving the macula in his left eye.

21. On August 25, 2008, Retinal Surgeon Sam Shin Yang, M.D., examined respondent and found a rhegmatogenous retinal detachment, macula off. On the same day, Dr. Yang performed a scleral buckling surgery on respondent's left eye.

22. Following his surgery in August 2008, S.M.'s retina detached two more times. Dr. Yang performed two more surgeries to address S.M.'s retinal detachments. S.M. has also

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<sup>5</sup> Dr. Nee's treatment records indicate that she could not determine the duration of the retinal detachment, and she not did see a retinal tear.

received less invasive treatments with the hope of restoring the vision in his left eye, but to no avail. Currently, S.M. has almost no vision in his left eye.<sup>6</sup> He experiences redness and constant pain and irritation in his left eye. He believes that had respondent done further testing or referred him to a retinal specialist in June 2008, that additional testing or treatment would have revealed a retinal tear. Had a tear been diagnosed early, S.M. believes that he could have avoided the detachment and loss of vision in his left eye.

23. In December 2009, S.M. filed a complaint against respondent with the board. S.M. did not initiate legal proceedings against Kaiser or respondent for the optometric care he received.

*Expert Testimony at Hearing Regarding Gross Negligence, Incompetence, Failure to Maintain Adequate Records and Failure to Refer*

24. Cory N. Vu, O.D., testified as an expert on behalf of complainant. Dr. Vu received his Doctor of Optometry from University of California, Berkeley, in 1994. Since 2011, Dr. Vu has worked at the University of California, Davis, where he oversees the quality of medical services provided to students. Prior to his work at UC Davis, Dr. Vu was a consultant for the Vision Care Program at Department of Health Care Services, State of California, an Assistant Clinical Professor at the UC Berkeley Optometry School, and in private practice. Dr. Vu's opinions were based upon his review of S.M.'s medical records, S.M.'s complaint to the board, and respondent's letter to the board.

25. According to Dr. Vu, retinal detachment is "one of only a few medical eye emergencies requiring prompt medical and/or surgical treatment to preserve vision." He explained that, normally, retinal detachments begin with a retinal tear. There are procedures available to seal retinal tears, such as cryotherapy and laser treatment. Early diagnosis and treatment of retinal tears can prevent retinal detachments. Dr. Vu stressed that timing is critical. Because retinal detachment involving the macula can cause permanent vision loss, Dr. Vu explained that the "most important reason for early detection is to prevent involvement of the posterior pole and detachment of the macula, which is what occurred in this case."

26. Dr. Vu noted the following risk factors associated with retinal detachment: severe myopia (nearsightedness), recent cataract surgery, high blood pressure, age (over 40 years old), and diabetic retinopathy, floaters, flashes, PVD, and the presence of pigmented cells. According to Dr. Vu, PVD is the "force that causes a tear and will eventually become a detachment." S.M. had all of these risk factors, thereby increasing the likelihood that he would develop a retinal tear or detachment.

27. Dr. Vu opined that the presence of pigmented cells floating in the anterior vitreous cavity immediately behind the lens combined with PVD, are very strong symptoms

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<sup>6</sup> S.M.'s vision in his left eye is 20/200.



of a torn retina. Dr. Vu observed that S.M.'s left eye condition had worsened since his visit to Dr. Seltzer approximately one month earlier, evidenced by the presence of PVD and pigmented cells. This should have mounted respondent's concern that S.M.'s left retina was torn or broken. In Dr. Vu's view, S.M.'s risk factors and symptoms suggested a 90 percent chance that S.M. had experienced a retinal break in the back of his left eye. Dr. Vu noted that the type of detachment that occurred in S.M.'s left eye, a rhegmatogenous retinal detachment, is a type of detachment that develops from a retinal tear. For these reasons, Dr. Vu believes that S.M. had a retinal tear when he was examined by respondent on June 6.

28. Dr. Vu determined that based upon respondent's risk factors and symptoms he presented to respondent on June 6, 2008, and the potential loss of vision that could result from a retinal detachment, the standard of care required respondent to take further action to rule out the presence of a retinal hole, tear or detachment.

29. In Dr. Vu's opinion, respondent should have used a scleral indentation procedure, which can detect asymptomatic peripheral retinal detachments. This procedure, according to Dr. Vu, could lead to early detection and treatment of a tear. Dr. Vu opined that respondent's failure to perform a scleral indentation on S.M. to determine whether S.M.'s left retina was torn or detached was an extreme departure from the standard of care and was also incompetent.<sup>7</sup>

According to Dr. Vu, the standard of care also required respondent to perform a visual field screening on S.M. According to Dr. Vu, a visual field screening can assist in the detection of a retinal detachment. In Dr. Vu's opinion letter, however, he states that because measurable field loss occurs only in advanced cases, visual field screening is usually ineffective at evaluating patients. Dr. Vu testified that respondent's failure to perform a visual field screening constituted a departure from the standard of care and was also incompetent. Complainant argues that respondent's failure to perform a visual field screening test constitutes negligence.

30. While an optometrist has the background and training to diagnose a retinal tear, break or detachment, Dr. Vu explained that by virtue of their medical training, retinal specialists are better suited to determine the presence of a retinal tear, break or detachment. For this reason, Dr. Vu believes that the standard of care requires a referral to a retinal specialist for a second opinion where an eye examination indicates a substantial likelihood of a condition that requires the treatment of a physician.

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<sup>7</sup> Dr. Vu defined incompetence as the "failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent optometrist." This is not the correct definition of incompetence. As used in professional misconduct matters, incompetence means "a lack of knowledge or ability in the discharging of professional obligations." (*James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1109.)

31. In Dr. Vu's opinion, the standard of care required respondent to refer S.M. to a retinal specialist for a second opinion after finding pigmented cells and PVD in S.M.'s left eye, because the presence of pigmented cells, PVD, along with S.M.'s other risk factors, presented a substantial likelihood that S.M.'s left retina was torn or detached. Respondent's failure to refer S.M. to a retinal specialist, in Dr. Vu's opinion, constituted an extreme departure from the standard of care and was also incompetent.

32. Dr. Vu also opined that optometrists have a professional obligation to document in a patient's treatment record the presence or absence of retinal holes, tears or detachment. Such documentation is necessary to maintain continuity of care with other medical professionals and to establish a record in the event that liability issues arise. In Dr. Vu's opinion, respondent's failure to note the presence or absence of retinal holes, tears or detachment in S.M.'s retina rendered respondent's treatment records inadequate and inaccurate.

33. Dr. Vu also opined that the symptoms respondent outlined in his August 22, 2008, email to respondent (hazy vision and darkness in the corner of his eye), presented "classic symptoms of retinal detachment." Because these symptoms presented an ocular emergency, the standard of care required respondent to instruct S.M. to immediately seek treatment from a retinal specialist or proceed to an emergency room. Dr. Vu emphasized that timing is critical in order to avoid involvement of the macula and irreversible damage to the eye. In Dr. Vu's view, respondent's email on August 25, 2008, suggesting that S.M. make another appointment if he experienced more symptoms, was an extreme departure from the standard of care and was also incompetent, because it failed to alert S.M. that his condition presented an emergency that required immediate medical attention.

34. Lawrence S. Thal, O.D., M.B.A., F.A.A.O., testified as an expert on behalf of respondent. Dr. Thal received his Doctor of Optometry from University of California, Berkeley, in 1975. Dr. Thal's training and experience are extensive. He was in private practice for many years until his retirement in 2008. Dr. Thal also taught for many years at the Optometry School in Berkeley. Currently, he is a Clinical Professor and Assistant Dean at the School of Optometry at Berkeley. Dr. Thal also served two terms on the State Board of Optometry and served as its president on several occasions. Dr. Thal's opinions were based upon his review of a binder of information provided to him by respondent's counsel. The binder included S.M.'s medical records and Dr. Vu's opinion letter.

35. In Dr. Thal's view, respondent's examination of S.M. on June 6, 2008, was comprehensive and did not fall below the standard of care. He stated that he "saw absolutely no evidence" that S.M.'s retina was either torn or detached when S.M. was examined by respondent on June 6, 2008. Dr. Thal believes that S.M.'s retinal detachment took place when S.M. first experienced darkness in a corner of his left eye, which was within few days of his August 23, 2008 visit to Dr. Nee. He reasoned that since S.M.'s retina was not torn or detached when he was examined by respondent, "there's nothing that I can see that [respondent] could have or should have done that would have prevented a retinal detachment." For this reason, Dr. Thal opined that the standard of care did not require

respondent to perform a scleral indentation or visual field screening, or refer S.M. to a retinal specialist on the basis of the symptoms presented.

36. Dr. Thal explained that although scleral indentation is a tool that allows a practitioner to see a retinal hole or tear, the standard of care does not require an optometrist to perform a scleral indentation procedure on a regular basis. Dr. Thal explained that such a procedure would be helpful if the practitioner sees something that looks like a hole or tear, but cannot confirm without manipulating the retina in a way to expose the tear or hole.

37. Although Dr. Thal agrees that PVD and pigmented cells could lead to a retinal detachment, not every patient who presents with PVD and pigmented cells will have a torn or detached retina. Similarly, in Dr. Thal's view, floaters and flashes can be, but are not necessarily, indicative of an impending retinal detachment. Rather than make an unnecessary referrals, Dr. Thal thinks that it is important to provide the patient with an appropriate exam and appropriate advice; and he believes that respondent did so.

38. Dr. Thal agreed with Dr. Vu that any obstruction of vision is a matter that requires urgent medical attention. S.M.'s complaint to respondent on August 22 that he was experiencing black dots, hazy vision, lightening flashes and darkness in a corner of his left eye is, in Dr. Thal's words, "highly suspicious of a retinal detachment." Dr. Thal opined that respondent's August 25, 2008 email response to S.M.'s August 22 email was within the standard of care because the phone number respondent relayed to S.M. was equipped to respond to patient inquiries 24 hours per day. For this reason, he disagreed with Dr. Vu that respondent's failure to instruct S.M. to seek immediate medical treatment from a retinal specialist, or at an emergency room, fell below the standard of care.

39. Dr. Thal concludes that respondent is not "responsible" for an "eventual retinal attachment which occurred independently of any actions by the Respondent." Dr. Thal points out that neither Dr. Yang nor Dr. Nee reported seeing a retinal tear when they examined S.M. These reports, in Dr. Thal's opinion, support his view that a referral to a retinal specialist on June 6, 2008, would not have forestalled S.M.'s retinal detachment.<sup>8</sup>

40. With respect to respondent's treatment records, Dr. Thal opined that respondent's treatment records were adequate and accurate. He explained that optometrists are not obligated to document every condition that is not present. Notes are sufficient if they provide information that is helpful to resolving a patient's complaint or helpful in providing further treatment to a patient. In Dr. Thal's opinion documenting "every condition that is not present is not particularly helpful to either of those." For these reasons, he concluded that respondent's failure to document the presence or absence of retinal holes, tears or

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<sup>8</sup> In Dr. Vu's view it would have been hard to see a tear once the macula was off. For this reason, the fact that neither Dr. Nee nor Dr. Yang observed a retinal tear does not mean that S.M.'s retina was not torn.

detachment in S.M.'s retina did not render respondent's treatment records inadequate or inaccurate.

### *Findings regarding Expert Opinions*

41. While both experts offered persuasive testimony, the opinions of Dr. Vu were, on the whole, more convincing than those expressed by Dr. Thal for several reasons. Given S.M.'s symptoms and risk factors, outlined above, Dr. Vu's view that the standard of care required respondent to perform a scleral indentation procedure and refer S.M. to a retinal specialist on June 6, 2008, to determine if S.M.'s retina was torn, broken or detached, is most persuasive. Accordingly, where a patient presents with signs and symptoms pointing to substantial likelihood that a patient's retina may be torn, broken or detached, the standard of care requires an optometrist to perform additional testing and obtaining a second opinion from a retinal specialist. In taking these additional measures to rule out the presence of a retinal tear or detachment, an optometrist protects a patient from his condition progressing to the point where the retina detaches and vision is lost.

42. The notion, suggested by Dr. Thal, that no referral was required on June 6, 2008 because S.M.'s retina was not, in fact, torn is not persuasive. The issue is not whether S.M.'s retina was actually torn on June 6, 2008; it is that given the multiple symptoms and risk factors presented to respondent, whether there was a substantial likelihood that S.M.'s retina was torn. The symptoms and risk factors pointing to a substantial likelihood of a tear is what triggered respondent's duty to perform additional tests and refer S.M. to a retinal specialist. Dr. Thal's analysis of respondent's conduct does not persuasively account for these factors.

43. Dr. Vu's opinion that the standard of care required respondent to make an immediate referral to a retinal specialist after receiving S.M.'s email on August 25, 2008, is also more persuasive than Dr. Thal's. The symptoms S.M. outlined in his August 22, 2008 email presented an ocular emergency. Respondent's email to S.M. on August 25, suggesting that he call for an appointment if his symptoms continued, failed to communicate to S.M. that an ocular emergency situation existed and that he should seek which immediate medical attention.

44. Dr. Vu's opinion that respondent's failure to document the presence or absence of retinal holes or tears or detachment in S.M.'s treatment record constituted inadequate record-keeping was also convincing. Respondent's explanation that he lacked space to make such a notation on the "retinal screening template" provided by his office did not abrogate his professional obligation to maintain adequate and accurate treatment records. In light of S.M.'s symptoms and risk factors for retinal tears or detachment, respondent should have made a note in S.M.'s treatment record regarding the presence or absence of retinal holes, tears, or detachment. His failure to do so constituted unprofessional conduct.

45. In Dr. Thal's opinion letter dated October 10, 2011, he states:

I am quite surprised and puzzled by the rational [sic] for the Complainant's pursuit of this case against an optometrist who has been in practice for over 35 years, with apparently no blemish on his record.

Dr. Thal postulates the following reason for the filing of the charges against respondent:

First, I believe that the Complainant does not understand the nature of this case and has relied on inappropriate information and conclusions presented by a consultant. Had the State Board included a licensed optometrist on its Enforcement Committee I would doubt that this case would have been filed. Historically the State Board had such a representative on its Enforcement Committee. I personally served in that capacity. . . .

46. It is noted that although Dr. Thal possesses many years of impressive experience in the field of optometry, the comments in his opinion letter suggest that has a negative view of the board's enforcement committee that predates this case. Dr. Thal's dim view of the board's ability to properly exercise its disciplinary functions lessens the persuasiveness of his opinions.

47. In light of the foregoing analysis of the expert opinions, the following findings are made with respect to respondent's treatment of S.M.:

a. Respondent's failure to refer S.M. to a retinal specialist on June 6, 2008, constituted an extreme departure from the standard of care and unprofessional conduct;

b. Respondent's failure to perform a scleral indentation on S.M. on June 6, 2008, to determine whether S.M.'s retina was torn or detached constituted an extreme departure from the standard of care.

c. The evidence, however, failed to establish that respondent's failure to perform a visual field screening constituted a departure from the standard of care.

d. Respondent's failure to document the presence or absence of retinal holes or tears or detachment in S.M.'s treatment record constituted inadequate and inaccurate record-keeping. Respondent's explanation that he did not make such notations in S.M.'s treatment record because he was working off a "diabetic retinopathy template" rather than a "flashes and floater template" does not justify his failure to document the information described above.

e. Respondent's failure to immediately refer S.M. to proceed to a retinal specialist or to an emergency room following receipt of S.M.'s August 22, 2008 email constituted an extreme departure from the standard of care.

f. Respondent's treatment of S.M. was not incompetent. Dr. Vu spent the majority of his testimony discussing issues related to the standard of care and unprofessional conduct such as a failure to refer to an appropriate physician and the maintenance of patient records. Dr. Vu spent little time discussing the reasoning for his conclusion that respondent was incompetent. Dr. Vu's conclusions in this regard are found unpersuasive because he did not apply the correct definition of incompetence; and, the evidence did not demonstrate that respondent lacked the knowledge or ability to discharge his professional obligations.

#### *Other Evidence Presented by Respondent*

49. Respondent graduated from UC Berkeley, in 1969 with a bachelor's degree in cellular biology. He obtained his doctor of optometry degree from UC Berkeley in 1976. Respondent enjoys his work and regularly attends continuing education courses. He does not belong to any professional associations, such as the American Optometry Association (AOA), because they are too expensive. He stated that he does "not pay attention" to AOA clinical practice guidelines.

50. Respondent sees about 90 patients per week. He has treated many patients who presented with retinal detachments. In such cases, he refers the patient to a retinal specialist. He has also had many patients who presented with retinal tears. If the tear is small, he refers the patient to an ophthalmologist for repair of the tear. If the retinal tear is big, he refers the patient to a retinal specialist.

51. This is the first complaint respondent has ever had against his optometric certificate. He has never been named in a civil law suit, and he has never been disciplined by Kaiser.

52. David Fok, O.D., is Chief of the Optometry Department at Kaiser. Dr. Fok has worked with respondent since 1994, first as a colleague, and later, as respondent's supervisor. Dr. Fok has a high opinion of respondent's work. He believes respondent is an "excellent clinician" and maintains "very thorough" patient charts. Dr. Fok also stated that respondent has a "very good reputation" with other eye care professionals at Kaiser.

53. Dr. Yang believes that respondent is a knowledgeable optometrist and he makes appropriate referrals.

#### *Costs*

54. Complainant has incurred costs of \$18,354.10, in its investigation and enforcement of this matter. The costs include the following items: \$3,089.10 in expert witness costs and \$15,265 in Attorney General costs. In the absence of evidence to the contrary, these costs are found to be reasonable.

## LEGAL CONCLUSIONS

1. The standard of proof applied to this matter is clear and convincing evidence to a reasonable certainty.

### *First Cause for Discipline: Gross Negligence and Repeated Negligent Acts*

2. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes gross negligence. (Bus. & Prof. Code, § 3110, subd. (b).) Gross negligence is defined as an extreme departure from the standard of care. (*James v. Board of Dental Examiners, supra*, 172 Cal.App.3d 1096, 1113.) Based upon the matters set forth in Factual Findings 10, 11, 18, 28 through 31, 33, 41, 42, 43, and 47, cause for discipline exists pursuant to Business and Professions Code section 3110, subdivision (b), based upon respondent's commission of gross negligence.

3. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes "[r]epeated negligent acts. To be repeated, there must be two or more negligent acts or omissions." (Bus. & Prof. Code, § 3110, subd. (c).) Based upon the matters set forth in Factual Findings 11, 29 and 47, cause for discipline does not exist based upon the commission of repeated negligent acts.

### *Second Cause for Discipline: Incompetence*

4. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes incompetence. (Bus. & Prof. Code, § 3110, subd. (d).) In the context of professional licensing, incompetence means "a lack of knowledge or ability in the discharging of professional obligations." (*James v. Board of Dental Examiners, supra*, 172 Cal.App.3d 1096, 1109.) Based upon the matters set forth in Factual Findings 47, cause for discipline does not exist under this section.

### *Third Cause for Discipline: Failure to Maintain Adequate and Accurate Records*

5. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes "[t]he failure to maintain adequate and accurate records relating to the provision of services" to his patient. (Bus. & Prof. Code, § 3110, subd. (q).) Based upon the matters set forth in Factual Findings 13, 32, 44 and 47, cause for discipline exists under this section.

### *Fourth Cause for Discipline: Failure to Refer to Appropriate Physician*

6. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes "the failure to refer a patient to an appropriate physician where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician." (Bus. & Prof. Code, § 3110,

subd. (y)(1).) Based upon the matters set forth in Factual Findings 10, 30, 31, 41, 42 and 47, cause for discipline exists under this section.

### *Disciplinary Considerations*

7. The board has adopted recommended guidelines to assess the level of discipline that should be imposed for violations of the statutes that govern optometric practice. (Cal. Code Regs., tit. 16, § 1575.) For each of the violations established in this case, the minimum recommended disciplinary action is stayed revocation with three years of probation, and the maximum discipline is revocation.

Respondent's failure to perform a scleral indentation procedure and to refer S.M. to a retinal specialist for a second opinion in June 2008 are serious transgressions in view of S.M.'s multiple risk factors for a retinal tear and the clinical symptoms pointing to the substantial likelihood of a retinal tear. Additionally, respondent's email response to S.M.'s August 22 email failed to communicate to S.M. the extremely serious and urgent nature of S.M.'s symptoms. The fact that S.M. sought treatment on his own before receiving respondent's email on August 25 did not abrogate respondent's duty to respond appropriately to S.M.'s email. It is troubling that respondent continues to maintain that his conduct adhered to professional standards when it clearly did not. Respondent's statement at hearing that he does not pay attention to AOA clinical practice guidelines is also of concern. On the other hand, respondent's conduct must be evaluated in the context of his unblemished career: he has been in practice for 36 years without a single prior complaint, and he is well-thought of by his colleagues.

In consideration of these factors, it is determined that the public will be adequately protected by the following order, which places respondent's certificate on probation for a period of three years. During this time, respondent will be required to complete coursework associated with his violations stemming from his performance of retinal examinations and record-keeping.

### *Costs*

8. Business and Professions Code section 125.3 provides that a licensee found to have violated the licensing act may be required to pay a sum not to exceed the reasonable costs of enforcement of the case. By reason of the matters set forth in Legal Conclusions 2, 5, and 6, cause exists to require respondent to pay cost recovery.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing board must consider in assessing costs. The board must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the board must consider a respondent's subjective good faith belief in



the merits of his or her position and whether the respondent has raised a colorable challenge; and the board must consider a respondent's ability to pay.

Here, respondent used the hearing process to obtain a dismissal of some of the charges and to present evidence which provided the basis for determining that a stayed revocation with probation, rather than outright revocation, should be imposed. In consideration of these factors it is determined that cause exists to reduce the board's cost recovery to the sum of \$12,354.10. This represents a reduction of \$6,000, from the amount requested by complainant.

#### ORDER

Certificate No. 6128 issued to respondent Leland Chung Hong Toy, O.D., is revoked by reason of Legal Conclusions 2, 5 and 6, jointly and individually. However, the revocation is stayed and the certificate shall be placed on probation for three (3) years upon the following terms and conditions:


- a. Obey All Laws – Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.
- b. Cooperate with Probation Surveillance – Respondent shall comply with the board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the board or its agent.
- c. Tolling of Probation If Respondent Moves Out-of-State – The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is required to immediately notify the board in writing of the date of departure, and the date of return, if any.
- d. Payment of Costs – Respondent shall pay the board its costs of investigation and enforcement in the amount of \$12,354.10. This amount is payable in equal monthly installments during the period of probation, provided that the full amount shall be paid 90 days prior to completion of probation. Respondent shall commence making payments upon notification by the board or its designee of the monthly installment amount, and the payment schedule. A failure to make timely payments pursuant to the payment schedule shall constitute a violation of probation, although respondent is free to pay the costs earlier than prescribed in the schedule. If respondent has not paid the full amount of costs at the end of the three-year period of probation, his probation shall be extended until full payment has been made.
- e. Education Coursework – Within 90 days of the effective date of this decision,

and on an annual basis thereafter, respondent shall submit to the board for its prior approval an educational program or course to be designated by the board, which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure. Respondent shall bear all associated costs. Following the completion of each course, the Board or its designee may administer an examination to test petitioner's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses as are approved by the board.

- f. Completion of Probation – Upon successful completion of probation, respondent's certificate will be fully restored.
- g. Violation of Probation – If respondent violates probation in any respect, the board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

DATED: \_\_\_\_\_

6/14/12



DIANE SCHNEIDER  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
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7 *Attorneys for Complainant State Board of Optometry*

8 **BEFORE THE**  
9 **STATE BOARD OF OPTOMETRY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation  
12 Against:

Case No. 2009-113

13 **LELAND CHUNG HONG TOY**  
7601 Stoneridge Drive  
14 Pleasanton, CA 94588  
Optometrist Certificate of Registration No.  
15 6128

**FIRST AMENDED ACCUSATION**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Mona Maggio ("Complainant") brings this First Amended Accusation solely in her  
21 official capacity as the Executive Officer of the State Board of Optometry ("Board"), Department  
22 of Consumer Affairs.

23 2. On or about August 31, 1976, the Board issued Optometrist Certificate of  
24 Registration Number 6128 to Leland Chung Hong Toy ("Respondent"). The Optometrist  
25 Certificate of Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on March 31, 2012, unless renewed.

27 ///

28 ///

**JURISDICTION**

3. This First Amended Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

**STATUTORY PROVISIONS**

4. Section 3110 of the Code states, in relevant part:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

"(d) Incompetence.

"(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

"(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

"(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

..."

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a

disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### FACTUAL BACKGROUND

7. On or about May 12, 2008, patient S.M.<sup>1</sup> presented to an ophthalmologist for an eye examination after seeing "floaters" and "flashes".

8. On or about June 6, 2008, S.M. presented to Respondent for diabetic retinopathy screening. S.M. has been a diabetic since 1988. S.M. reported to Respondent that he was seeing "floaters", "flashes", and "dark shades" in his left eye.

9. S.M.'s treatment records from June 6, 2008, state the following with regard to S.M.'s past ocular history: "DM-min background diabetic retinopathy 3/07 Cataracts os>od High myopPhaco LEFT eye 8/20/2007 t2 -2.00 No postop eyedrops." S.M.'s treatment records from June 6, 2008, also list the following under "problem list": "background retinopathy, diabetic"; "diabetes mellitus type 2 w hypoglycemia"; and "non proliferative diabetic retinopathy, mild".

10. Respondent performed a biomicroscopy on S.M. and documented that there were "few pigmented cells" in the vitreous of S.M.'s left eye.

11. Respondent also performed a binocular indirect ophthalmoscopy on S.M. by dilating his eyes. Under "Macula", Respondent documented the following: "OD one dot heme; OS clear & flat."<sup>2</sup> Under "Retina", Respondent noted the following: "OD dot heme in 2 quadrants; OS dot heme in one quadrant."

12. Respondent did not perform a visual field screening or scleral indentation on S.M.

<sup>1</sup> Initials are used herein to protect the patient's privacy. The patient's identity will be provided pursuant to a proper discovery request.

<sup>2</sup> "OD" refers to the right eye. "OS" refers to the left eye. "Heme" means hemorrhage.

13. Under "Assessment", Respondent documented that S.M. suffered from Diabetes Mellitus Type 2 with mild Nonproliferative Diabetic Retinopathy, that he had a cataract in his right eye, and that he had a Posterior Vitreous Detachment ("PVD") in his left eye.

14. Respondent did not document whether there were any holes or tears in S.M.'s retinas, or whether S.M.'s retinas were detached. Nor did Respondent refer S.M. to a retinal specialist.

~~after finding pigmented cells and a PVD in S.M.'s left eye. The presence of pigmented cells and~~

a PVD indicates that the patient's retina is either torn or detached.

15. At the end of the examination, Respondent ordered S.M. to return in one year for routine diabetic retinopathy screening. He also advised S.M. that if there was "[a]ny change in flashes or floaters", S.M. should contact him or another doctor "immediate[ly]."

16. On or about August 22, 2008, S.M. wrote an email to Respondent in which he stated the following: "I am continuing to have problem with my left eye . . . . Recently, I am seeing a lot of tiny black dots and also like lightning flashes and hazy vision with some darkness in one corner of my left eye." In response, on August 25, 2008, Respondent wrote S.M. an email in which he stated the following: "If you are seeing either more dots or different symptoms than before, you should go ahead and make another appointment. The number is 847-5065."

17. On or about August 23, 2008, S.M. presented to an ophthalmologist who diagnosed him with retina detachment macular off in the left eye:

### FIRST CAUSE FOR DISCIPLINE

**(Gross Negligence and/or Repeated Negligent Acts)**

18. Respondent is subject to disciplinary action under section 3110, subdivisions (b) and/or (c) of the Code for gross negligence and/or repeated negligent acts in that he failed to (1) perform a visual field screening and scleral indentation on S.M. to determine whether S.M.'s left retina was torn or detached; (2) immediately refer S.M. to a retinal specialist after finding pigmented cells and a PVD in S.M.'s left eye; and (3) immediately refer S.M. to a retinal specialist or the emergency room upon receiving S.M.'s email dated August 22, 2008. The circumstances of Respondent's gross negligence are set forth above in Paragraphs 8, 9, 10, 12, 13, 14, and 16.

**SECOND CAUSE FOR DISCIPLINE**

**(Incompetence)**

19. Respondent is subject to disciplinary action under section 3110, subdivision (d) of the Code for incompetence in that he failed to (1) perform scleral indentation on S.M. to determine whether S.M.'s left retina was torn or detached; (2) immediately refer S.M. to a retinal specialist after finding pigmented cells and a PVD in S.M.'s left eye; and (3) immediately refer S.M. to a

retinal specialist or the emergency room upon receiving S.M.'s email dated August 22, 2008. The circumstances of Respondent's incompetence are set forth above in Paragraphs 8, 9, 10, 12, 13, 14, and 16.

**THIRD CAUSE FOR DISCIPLINE**

**(Failure to Maintain Adequate and Accurate Records)**

20. Respondent is subject to disciplinary action under section 3110, subdivision (q) of the Code in that he failed to document whether there were any holes or tears in S.M.'s retinas, or whether S.M.'s retinas were detached. The circumstances of this omission are set forth above in Paragraph 14.

**FOURTH CAUSE FOR DISCIPLINE**

**(Failure to Refer Patient to Appropriate Physician)**

21. Respondent is subject to disciplinary action under section 3110, subdivision (y)(1) of the Code in that he failed to refer S.M. to a retinal specialist after finding evidence during his examination indicating that there was a substantial likelihood S.M.'s left retina was torn or detached. The circumstances of this conduct are set forth above in Paragraphs 8, 9, 10, 13, and 14.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

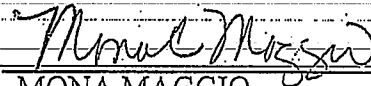
1. Revoking or suspending Optometrist Certificate of Registration Number 6128 issued to Leland Chung Hong Toy;

///

2. Ordering Leland Chung Hong Toy to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 10-11-11

  
MONA MAGGIO  
Executive Officer  
State Board of Optometry  
Department of Consumer Affairs  
State of California  
*Complainant*

SF2010202146



1 KAMALA D. HARRIS  
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6 Facsimile: (415) 703-5480  
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7 *Attorneys for Complainant State Board of Optometry*

8 **BEFORE THE**  
9 **STATE BOARD OF OPTOMETRY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation  
Against:

Case No. 2009-113

13 **LELAND CHUNG HONG TOY**  
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15 **Pleasanton, CA 94588**  
16 **Optometrist Certificate of Registration No.**  
17 **6128**

**FIRST AMENDED ACCUSATION**

Respondent.

18 Complainant alleges:

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21 official capacity as the Executive Officer of the State Board of Optometry ("Board"), Department  
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23 2. On or about August 31, 1976, the Board issued Optometrist Certificate of  
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"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

"(d) Incompetence.

"(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

"(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

"(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a

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2 or reinstated.

3 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
4 administrative law judge to direct a licensee found to have committed a violation or violations of  
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24 12. Respondent did not perform a visual field screening or scleral indentation on S.M.

26 <sup>1</sup> Initials are used herein to protect the patient's privacy. The patient's identity will be  
27 provided pursuant to a proper discovery request.

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2 Mellitus Type 2 with mild Nonproliferative Diabetic Retinopathy, that he had a cataract in his  
3 right eye, and that he had a Posterior Vitreous Detachment ("PVD") in his left eye.

4 14. Respondent did not document whether there were any holes or tears in S.M.'s retinas,  
5 or whether S.M.'s retinas were detached. Nor did Respondent refer S.M. to a retinal specialist  
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17 17. On or about August 23, 2008, S.M. presented to an ophthalmologist who diagnosed  
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19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Gross Negligence and/or Repeated Negligent Acts)**

21 18. Respondent is subject to disciplinary action under section 3110, subdivisions (b)  
22 and/or (c) of the Code for gross negligence and/or repeated negligent acts in that he failed to  
23 (1) perform a visual field screening and scleral indentation on S.M. to determine whether S.M.'s  
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26 specialist or the emergency room upon receiving S.M.'s email dated August 22, 2008. The  
27 circumstances of Respondent's gross negligence are set forth above in Paragraphs 8, 9, 10, 12, 13,  
28 14, and 16.

**SECOND CAUSE FOR DISCIPLINE**

**(Incompetence)**

19. Respondent is subject to disciplinary action under section 3110, subdivision (d) of the Code for incompetence in that he failed to (1) perform scleral indentation on S.M. to determine whether S.M.'s left retina was torn or detached; (2) immediately refer S.M. to a retinal specialist after finding pigmented cells and a PVD in S.M.'s left eye; and (3) immediately refer S.M. to a

retinal specialist or the emergency room upon receiving S.M.'s email dated August 22, 2008. The circumstances of Respondent's incompetence are set forth above in Paragraphs 8, 9, 10, 12, 13, 14, and 16.

**THIRD CAUSE FOR DISCIPLINE**

**(Failure to Maintain Adequate and Accurate Records)**

20. Respondent is subject to disciplinary action under section 3110, subdivision (q) of the Code in that he failed to document whether there were any holes or tears in S.M.'s retinas, or whether S.M.'s retinas were detached. The circumstances of this omission are set forth above in Paragraph 14.

**FOURTH CAUSE FOR DISCIPLINE**

**(Failure to Refer Patient to Appropriate Physician)**

21. Respondent is subject to disciplinary action under section 3110, subdivision (y)(1) of the Code in that he failed to refer S.M. to a retinal specialist after finding evidence during his examination indicating that there was a substantial likelihood S.M.'s left retina was torn or detached. The circumstances of this conduct are set forth above in Paragraphs 8, 9, 10, 13, and 14.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

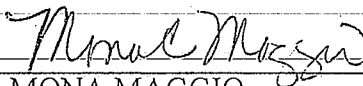
1. Revoking or suspending Optometrist Certificate of Registration Number 6128 issued to Leland Chung Hong Toy;

///

1           2.    Ordering Leland Chung Hong Toy to pay the State Board of Optometry the  
2 reasonable costs of the investigation and enforcement of this case pursuant to Business and  
3 Professions Code section 125.3;

4           3.    Taking such other and further action as deemed necessary and proper.  
5

6 DATED: 10.11.11

  
MONA MAGGIO  
Executive Officer  
State Board of Optometry  
Department of Consumer Affairs  
State of California  
*Complainant*

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